

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY DAVID JACKSON,

Defendant-Appellant.

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UNPUBLISHED

February 25, 2010

No. 290475

Wayne Circuit Court

LC No. 07-010660-FC

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of bank robbery, MCL 750.531, and sentenced to a prison term of 3-1/2 to 8 years. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of aiding and abetting codefendant Tyrone Grimmer, who robbed a Comerica Bank branch in the Fisher Building in Detroit.

Defendant argues that there was insufficient evidence of his participation in the robbery to support his conviction. We disagree. In evaluating a challenge to the sufficiency of the evidence in a bench trial, “this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. Findings of fact by the trial court may not be set aside unless they are clearly erroneous.” *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

Initially, we note that defendant raised this same issue in a prior delayed application for leave to appeal, which this Court denied “for lack of merit in the grounds presented.” *People v Jackson*, unpublished order of the Court of Appeals, entered January 6, 2009 (Docket No. 287496). Under the law of the case doctrine, a denial for “lack of merit” is binding in a subsequent appeal with respect to the issue previously raised. See *People v Douglas*, 122 Mich App 526, 530; 332 NW2d 521 (1983); *People v Wiley*, 112 Mich App 344, 346; 315 NW2d 540 (1981). But even if the law of the case doctrine did not apply, we would reject defendant’s request for relief. See *People v Phillips (After Second Remand)*, 227 Mich App 28, 33-34; 575 NW2d 784 (1997).

A defendant who procures, counsels, aids, or abets in the commission of an offense may be convicted and punished as if he committed the offense directly. *People v Norris*, 236 Mich

App 411, 419; 600 NW2d 658 (1999). The elements of aiding and abetting are: (1) the defendant or some other person committed the underlying crime, (2) the defendant performed acts or gave encouragement that aided and assisted the commission of the crime, and (3) at the time of giving aid or encouragement, the defendant intended the commission of the crime or had knowledge that the principal intended its commission. *People v Smielewski*, 235 Mich App 196, 207; 596 NW2d 636 (1999). Viewed in the light most favorable to the prosecution, the evidence showed that defendant assisted codefendant Grimmert's commission of the robbery when, at Grimmert's request, he entered the bank before Grimmert and determined how many people were present and provided that information to Grimmert before the robbery. Defendant admitted in a police statement that at the time he provided this assistance, he knew that Grimmert intended to rob the bank, and defendant admitted that he intended to get some "easy fast money" from the robbery. The evidence was sufficient to establish that defendant aided and abetted Grimmert in the commission of the crime.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Mark J. Cavanagh  
/s/ Alton T. Davis